IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.6961 OF 2005

Jagdish K.Shroff ...Applicant

Versus

Rabo India Finance Pvt.Ltd. & Anr. ...Respondents

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Mr.R.S.Tripathi for Applicant.

Mr.Vivek Sharma for Respondent No.1.

Ms.G.P.Mulekar, A.P.P. for Respondent No.2.

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CORAM: A.M.KHANWILKAR, J.

NOVEMBER 28, 2005.

P.C.

1. Heard Counsel for the parties.

2. Rule. Rule made returnable forthwith, by consent. Mr.Sharma waives notice for Respondent No.1. Ms.Mulekar, A.P.P. waives notice for Respondent No.2.

3. As short question is involved, Application is taken up for final disposal forthwith, by consent.

4. This Application is for quashing of criminal action instituted against the Applicant, who has been named as accused No.5 in case No.26/S/2001, now numbered as 34/S/2003 for offence punishable under Section 138 read with Section 141 of the Negotiable Instruments Act.

5. Admittedly, the Applicant is neither the Managing Director or Joint Managing Director or signatory to the cheque. The Applicant is Chartered Accountant by profession and is a nominal director. The Applicant has been named as accused No.5 merely because he is the director of the accused No.1 company. In support of the complicity of the Applicant, averments in Para 2 of the complaint reads thus:

> "Accused No.4 to 9 being Directors of Accused No.1 are the persons in charge of the day to day affairs, Management and Conduct of Accused No.1. The Accused no.2

> and 9 are liable to be prosecuted for having consented and/or connived in commission of the present offence, in their capacity as Managing Director and Directors of Accused No.1 and further the offence is attributable to Accused Nos.2 and 9 on account of their neglect to ensure and make adequate arrangements, to honour the cheque, issued for and on behalf of Accused No.1, when presented for encashment. Accused No.2 and 9 on account of their failure to comply with the requisitions made in the demand notice, issued under Section 138 of the Negotiable Instruments Act within the stipulated period are therefore liable to be proceeded against accordingly."

6. It is well settled that such averments are not enough. Something more is required to be spelt out to indicate that the nominal director was in fact the in-charge of day-to-day affairs and management and conduct of the accused company. Recently, I had occasion to deal with similar contention in the case of Chandrahas C.Dayal vs. CFL Capital Financial Services & Anr. in Criminal Writ Petition No.583 of 2005 decided on 19th November 2005, which, in turn, refers to the decisions of the Apex Court as well as this Court including recent decision of the Supreme Court in **S.M.S. Pharmaceuticals Ltd. vs. Neeta Bhalla & Anr. reported in JT 2005 (8) SC 450.**

7. Accordingly, this Application ought to succeed. Hence, this Application is made absolute in terms of prayer clause (a). The criminal action referred to above is quashed to the extent of Applicant/accused No.5 only. In other words, the said criminal action shall proceed in accordance with law, insofar as other accused are concerned.

A.M.KHANWILKAR, J.